

CIVIL REVISION APPLICATION No 578 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No.
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No.
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? : NO  
No.

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VAKHARIA TRADERS

Versus

ANIS INTERNATIONAL ASSOCIATION  
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Appearance:

MR TS NANAVATI FOR MR UNMESH D SHUKLA for Petitioners  
MR HP MOTIRAMANI for Respondent No. 1  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/09/2000

ORAL JUDGEMENT

Summary Suit No.1075/96 was filed before the trial Court for recovery of the amount of Rs.1,70,767-70. The Summary Suit was decreed exparte on 14-11-1997. The execution proceedings were initiated and thereafter Misc. Civil Application No.603/98 was filed for setting aside the exparte decree along with Misc. Civil Application No.248/98 for condonation of delay of 72 days caused in

filing Civil Application for setting aside the exparte decree.

2. It appears that the process fee for Misc. Civil Application No. 603/98 was not deposited. Hence, Misc. C.A. No.603/98 was dismissed for default. The petitioner moved Misc. Civil Application No.277/2000 for restoration of Misc. C.A. No.603/98 along with Civil Misc. Application No.835/99 for condonation of delay caused in filing M.C..A. No.277/2000. M. C.A. No.835/99 was allowed subject to payment of costs. The restoration application i.e. M.C.A. No. 277/2000 was allowed by the impugned order dated 27-4-2000 on the condition to deposit Rs.75,000/- on or before 12-5-2000. That order dated 27-4-2000 has been challenged in this revision application before this Court only on the ground that the condition to deposit Rs.75,000/- is too harsh and onerous and hence the impugned order is illegal and perverse one.

3. On the contrary, the learned counsel for the respondent contended that the impugned order passed by the trial Court is perfectly justified and legal. He has submitted that the suit has been decreed exparte in the year 1997 and the fruits thereof could not be enjoyed by the respondent even in the year 2000. He has further submitted that the condition directing the petitioner to deposit Rs.75,000/- is fully legal and justified. He has also contended that the trial Court has exercised discretion within its jurisdiction and the trial Court has acted legally and has not committed any breach of the provisions of law or has not committed any material irregularity by committing some error or procedure during the course of trial. In support of his contentions, he has relied on decisions of this Court in the cases of (i) Vadodaria Vadilal Hirachand Vs. Thakar Jayantilal Maganlal reported in 1996 (1) GCD 393, (ii) Heir of Mahant Shri Vyankates - Hvardasji Guru Madhavdasji & Anr. Vs. Govinddasji Madhavdasji & Ors, reported in 1997 GCD 35 and (iii) in the case of Gujarat Fluorochemicals Ltd. Vs. Ranj Gram Panchayat reported in 1997 (1) GCD 79.

4. I have carefully considered the contentions made by the learned counsel for the parties. No doubt, the discretion exercised by the trial Court is within its jurisdiction vested with the trial Court. It appears from the material on record and facts and circumstances of this case that Misc. Civil Application No. 603/98 filed for setting aside the ex-parte decree is still pending and the petitioner has already deposited the amount of Rs.50,000/- in compliance of the conditional

order of the trial Court granting leave to defend and Rs.25,000/- in compliance of the order of this Court which was passed on the undertaking given by the learned counsel for the petitioner. As such, the petitioner has already deposited in all Rs.75,000/- in compliance of the orders of this Court and the order of the trial Court passed on 27-4-2000 towards the decretal amount. The impugned order appears to be harsh and onerous and hence deserves to be modified.

5. In the facts and circumstances of this case, the amount deposited by the petitioner is sufficient and the order dated 27-4-2000 passed by the trial Court is modified to the extent that Misc. Civil Application No. 277/2000 is allowed on the condition to deposit of Rs. 25,000/- in place of Rs.75,000/-, the amount of Rs.25,000/- is said to have been deposited and the trial Court is directed to decide Misc. Civil Application No. 603/98 in accordance with law after giving reasonable opportunity to the parties concerned.

6. In the last, the learned counsel for the respondent submitted that the respondent be permitted to withdraw the amount deposited by the petitioner. For this purpose, the respondent may move an application before the Court concerned and the Court concerned will pass an appropriate order in accordance with law.

7. In view of the above directions and modification in the order this Revision Application allowed in part. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim relief granted by this Court stands vacated.

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/JVSatwara/